of O.28 r.11. Fry J. in *Fritz* v. *Hobson, supra,* did not think so. This is what he said at page 561 of the All England Report: —

"There is another ground on which, in my opinion, I have jurisdiction to make the order asked for, namely, under Order XLI.A. In my view the error in the present case has arisen from the accidental omission of counsel to call my attention to the adjourned motion when I pronounced my judgment, an omission very natural at a time when counsel's attention was directed to matters of greater importance. In substance, the motion was before me at the trial, for my attention was called to the affidavits made upon it. I recollect quite enough of what took place, and I am confirmed in my recollection by the notes which I made at the time, to know that all the affidavits upon the motion were in substance before me at the trial, and that the various witnesses who made those affidavits were examined in the course of the proceedings. On this ground, therefore, I think I have jurisdiction to make the order."

This passage was relied upon and repeated by Morton J. in *In Re Inchcape, supra.* An omission to ask for costs was in these two cases treated as within the ambit of O.28 r.11.

In the course of the arguments both sides referred to the case of *Tong Lee Wah & Anor.* v. *Chin Ah Kwi & Ors.*[5] This was a case in which I was overruled by the Federal Court upon the ground that I was wrong in implying that the liberty to apply which was reserved meant liberty to apply to vary an order that had been drawn up and perfected. Mr. R. K. Nathan drew my attention to the case of *Cristel* v. *Cristel*[6] where in the majority judgments of Somervell and Denning L.JJ. it was suggested that though the order was drawn up if the applicant could prove a change of circumstances the court must have allowed the variations sought. I trust I will be forgiven if I mention that it was precisely a change of circumstances which led me to vary the order. It would not however appear that the case of *Cristel* v. *Cristel* was ever brought to the attention of the Federal Court. Be that as it may, I am of course bound by the decision of the Federal Court but on the facts of this case the decision in *Tong Lee Wah's* case has, with respect, no relevance since it was a case dealing with an order drawn up and perfected. *Cristel's* case was also a case of an order that had been drawn up.

In the circumstances of this case and on the authorities, I conceive I have the power either under the inherent jurisdiction of the court where the order has not been drawn up and entered, or under the liberty to apply implied in the order or by virtue of O.28 r.11 of the R.S.C., to grant the order sought for in the Summons-in-Chambers together with costs of the application to be taxed by the proper officer of this court and when taxed to be paid by the respondent to the applicant.

Application granted.

Solicitors: *Skrine & Co.; R. K. Nathan & Co.*

PUBLIC PROSECUTOR v. GAN AH BEE

[A.Cr.J. (Ajaib Singh J.) March 8, 1975]
[Seremban — Criminal Appeal No. 3 of 1974]

Price Control Act 1946, s. 22(1) — Illegal entry and seizure — Admissibility of evidence.

Evidence — Illegal or unlawful search — Admissibility.

An enforcement officer under the Price Control Act entered the respondent's premises and made seizure of goods. The officer was not a person authorised under section 14 of the Act and his entry and seizure therefore were illegal. At the conclusion of the prosecution case, the court acquitted the respondent without calling on his defence. The Public Prosecutor appealed against the acquittal.

Held: evidence obtained as a result of an illegal or unlawful search did not affect its admissibility provided that the evidence was otherwise relevant.

Cases referred to:-

(1) *C. Mohammad* v. *Public Prosecutor* [1974] 1 M.L.J. 25.
(2) *Saminathan* v. *Public Prosecutor* [1937] M.L.J. 39.
(3) *Public Prosecutor* v. *Tan Keng Siew* [1955] M.L.J. 59.
(4) *Wong Liang Nguk (f)* v. *Public Prosecutor* [1953] M.L.J. 246.
(5) *Kuruma* v. *The Queen* [1955] A.C. 197 (P.C.).

CRIMINAL APPEAL.

Manjeet Singh (Deputy Public Prosecutor) for the appellant.

S. K. Lingam for the respondent.

Ajaib Singh J.: This is an appeal by the Public Prosecutor from the decision of the learned magistrate who had acquitted and discharged the respondent at the close of the prosecution case on a charge under section 22(1) of the Price Control Act, 1946, for failing to affix labels or tags on certain goods offered for sale indicating the grades and prices thereof as required under the Price Control (Indication of Grade and Prices) Order, 1967.

The brief facts of this case are that an enforcement inspector from the Ministry of Trade, Commerce and Industry made a surprise check in a shop selling sundry goods on a wholesale as well as on a retail basis. Various goods were displayed for sale in the shop and it was discovered that some goods which were required to be affixed with marks or labels with an indication of their grades and prices under the Price Control (Indication of Grade and Prices) Order, 1967, made by the Price Controller in the exercise of the powers conferred upon him under section 13(1)(d) of the Price Control Act, 1946, and gazetted as P.U. 271 of 1967 as amended by P.U.(A) 512 of 1969 and P.U.(A) 282 of 1972, were not so marked or labelled. The offending goods consisted of soap, egg mee, tea, baby gripe water, coconut oil, agar-agar and 10 brushes. Except for the brushes these goods were all contained in boxes, packets, tins and bottles. The enforcement inspector seized the goods and lodged a report. Subsequently, proceedings were instituted against the respondent who was the retailer of those goods for an offence under section 22(1) of the Price Control Act for not complying with the order made by the Price Controller.

At the end of the case for the prosecution in the lower court Mr. S. K. Lingam, learned counsel for the defence, made a submission of no case to answer. He

said that the enforcement inspector had no authority to enter the shop and seize the goods under section 14(1)(a) and (b) of the Price Control Act and the seizure of the goods was, therefore, illegal. The learned magistrate agreed and he held that the respondent had no case to answer on the ground that the entry, inspection and seizure of the goods by the enforcement inspector was illegal as section 14(1)(a) and (b) of the Act which empowers price control officers and police officers not below the rank of sub-inspector to enter the premises and seize the offending goods had not been complied with. The enforcement inspector in this case was not one of the officers stated in section 14(1) and there was no evidence that he had any authority in writing as provided for in the sub-section empowering him to enter his shop and seize the goods. The learned magistrate acquitted and discharged the respondent and it is against this order of acquittal that the Public Prosecutor has now appealed.

During the hearing of the appeal before me Mr. S. K. Lingam for the respondent raised a new point which he had not taken up in the lower court. I think it will be convenient to deal with this point first. Mr. Lingam submitted that the charge as it stood was bad and not known to the law and he cited the case of *C. Mohammad* v. *Public Prosecutor*[1] in support. In that case the appellant was convicted under section 22(1) of the Price Control Act for failing to affix labels or tags indicating the grades and prices to textiles offered for sale. On appeal Syed Agil Barakbah J. observed that paragraph 2(1) of the Price Control (Indication of Grade and Prices) Order, 1967 (P.U. 271 of 1967) made pursuant to the provisions of section 13(1)(d) of the Price Control Act did not require labels or tags to be affixed to the goods or classes of goods but only to bags or containers of articles which were offered for sale. There was no order under section 13(1)(d) of the Act requiring retailers to affix tags or labels to any goods or classes of goods and the learned judge was of the view that failure to affix any labels or tags on any goods or classes of goods which were displayed in the retailer's premises to which the public had access was not an offence because there had not been any order published in the *Gazette* making it an offence under section 13(1) of the Act. Syed Agil Barakbah J. posed the question whether the table on which the textiles were placed could be termed as a "container" within the context of section 13 but he did not feel inclined to answer it. In the event his Lordship held that the charge did not disclose any offence known to the law and that there had been a miscarriage of jutsice. The trial was declared a nullity and the conviction was quashed.

The case before me is less difficult than the one with which Syed Agil Barakbah J. had to contend. As I have stated earlier except for the brushes the articles seized by the enforcement inspector in the present case were in various containers so that it was not open to the defence to raise the same argument here as the one raised in the case of *C. Mohammad* v. *Public Prosecutor* except in relation to the brushes. The 10 brushes which were only a small fraction of the goods seized were not in any bags or containers. The Price Control (Indication of Grade and Prices) Order, 1967, reads as follows: —

"1. This Order may be cited as the Price Control (Indication of Grade and Prices) Order, 1967, and shall come into force on 15th June, 1967.

2. (1) Every retailer of the articles mentioned in the Schedule hereto shall affix labels or tags on the bags or containers of such articles offered for sale which are displayed in that part of the premises of the retailer to which the public have access indicating the grade and price of such articles.

(2) Such labels or tags shall be of a size of not less than 6 inches by 4 inches.

3. Every retailer of any of the articles mentioned in the said Schedule shall indicate on all such articles displayed for sale the grade and price of such articles in the National Language, in English and in the language of the retailer.

4. Any person who contravenes or fails to comply with any provisions of this Order shall be guilty of an offence against the Price Control Ordinance, 1946

SCHEDULE

Rice of all types
Sugar
Wheat flour
Cooking Oil."

Subsequently, the schedule listing the articles in respect of which marks or labels were required to be affixed was amended twice by P.U.(A) 512 dated December 5, 1969 and P.U.(A) 282 dated September 7, 1972, whereby more articles including those which are the subject-matter of this appeal were added to the schedule. Paragraph 2(2) of the original order was itself amended by P.U.(A) 512 by substituting thereof the following:—

"(2) Labels or tags shall be of such reasonable size as to be readable at a distance of five feet."

Having read the judgment of Syed Agil Barakbah J. in the case of *C. Mohammad* v. *Public Prosecutor* and after considering the relevant legislation I wonder if another point of view may not validly be advanced on the question of the interpretation and applicability of the order made by the Price Controller under section 13(1)(d) of the Price Control Act. It is true that paragraph 2(1) of the order is somewhat restricted in its language for it mentions the affixing of labels or tags on the bags and containers of articles offered for sale and it is silent in respect of any goods or classes of goods which are offered for sale. But then I think the order should be read as a whole in which case paragraph 2 read with paragraph 3 would require every retailer of any of the articles listed in the schedule to indicate on all such articles displayed for sale the grade and price of such articles in the languages stated in paragraph 3. Under section 13(1)(d) the Price Controller is empowered to *prescribe* marks or labels to be affixed by retailers to any goods or classes of goods or containers thereof indicating, *inter alia*, the grade and price of the goods. This he has done under paragraph 2 of his order by requiring retailers to affix labels or tags of a certain size on the bags or containers of such articles as are mentioned in the schedule indicating the grade and price of the articles, and under paragraph 3 by requiring retailers of any of the articles mentioned in the schedule to indicate on all such articles displayed for sale the grade and price of such articles in the National Language, in English and in the language of the retailer. The Price Controller has thus *prescribed* the marks or labels to be *affixed* by retailers to goods or containers thereof within the

meaning of section 13(1)(d) of the Act. The ordinary dictionary meaning of the word "affix" as a transitive verb is to fix or fasten something on to another as well as to add something in writing so that the expression "prescribe marks or labels to be affixed" in section 13(1)(d) means not only the prescribing of labels or tags to be fixed or fastened on goods but also the prescribing of marks to be written on the goods. While paragraph 1 of the Price Controller's order mentions labels or tags paragraph 3 thereof states that every retailer of the articles mentioned in the schedule shall *indicate* on all such articles displayed for sale the grade and price of the goods in the languages mentioned therein. The requirement under paragraph 3 can be satisfied by a retailer only by marking on the goods mentioned in the schedule the grade and price of such goods in the three languages stated in the paragraph. Paragraph 3 thus prescribes a mark to be affixed by retailers on the goods within the provisions of section 13(1)(d) of the Price Control Act. The Price Control (Indication of Grade and Prices) Order, 1967, could have been better arranged and worded following as closely as possible the terminology used in the Price Control Act particularly section 13(1)(d) thereof so as to leave no room for any doubt or uncertainty. Nevertheless, I do find it difficult to say that taken as a whole the order does not serve its manifest purpose which is to prescribe marks or labels to be affixed by every retailer to such goods or containers thereof as are mentioned in the schedule indicating the grades and prices of those goods in the National Language, in English and in the language of the retailer.

I shall now come to the main point in issue in this appeal. It has long been held as a matter of law that evidence obtained as a result of an illegal or unlawful search does not affect its admissibility provided that the evidence so obtained is otherwise relevant to the case that is being heard. This proposition applies in general to both civil and criminal cases. In *Saminathan* v. *Public Prosecutor*[2] which was a case under the Betting Enactment — Aitken J. held that the legality or illegality of a person's arrest does not concern the court which is trying him and, in respect of certain documents that were seized by the police during the illegal search of the appellant's room, that the court was only concerned with the relevance of the documents seized and not with the manner in which the police obtained possession of them. Buhagiar J. in the case of *Public Prosecutor* v. *Tan Keng Siew*[3] and Thomson J. (as he then was) in the case of *Wong Liang Nguk (f)* v. *Public Prosecutor*[4] have also expressed a similar view. As was stated by Lord Goddard in the Privy Council case of *Kuruma* v. *The Queen*: [5]

"the test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the court is not concerned with how the evidence was obtained."

In the present case the evidence relating to the seizure and the subsequent production of the goods at the trial was relevant evidence to the matters in issue and this evidence was, therefore, admissible notwithstanding that it was obtained illegally and not in compliance with the provisions of section 14(1)(a) and (b) of the Price Control Act. The learned magistrate was wrong when he held that by reason of the illegal entry and search the evidence pertaining thereto was inadmissible. The appeal is allowed and I direct the learned magistrate to call upon the defence.

Appeal allowed.

Solicitors: *Syarikat Atma Singh Gill & Gill.*

PERIASAMY s/o KARUPPAN & ORS. v. NATIONAL UNION OF PLANTATION WORKERS & ORS.

[O.C.J. (Abdul Hamid J.) March 14, 1975]
[Kuala Lumpur — Civil Suit No. 918 of 1974]

Injunction — Trade unions — Domestic remedies — Jurisdiction of court.

The applicants were members of a trade union. The applicants sued for an injunction to restrain the respondents from taking or holding or remaining in office as executive members of the union, on the ground that their election was illegal. The matter was not referred to the Registrar of Trade Unions for a decision as required by the Constitution of the Union. The respondents raised as a preliminary objection the applicants' entitlement to sue.

Held: the applicants ought to have exhausted all domestic remedies before coming to court.

Cases referred to:-

(1) *Tharmalingam* v. *Sambanthan* [1961] M.L.J. 63, C.A.

(2) *Kolandaisamy* v. *Annamalai and The Harbour Trade Union (Selangor) Port Swettenham* [1968] 1 M.L.J. 222.

(3) *Muthuraku* v. *Kuala Lumpur Municipality Workers Trade Union* [1973] 1 M.L.J. 206, F.C.

CIVIL SUIT.

Karam Singh Veriah for the plaintiffs.

D. P. Xavier (*G. Vadiveloo* with him) for three defendants.

Abdul Hamid J.: By Notice of Motion of August 14, 1974 the applicants/plaintiffs asked for an injunction to restrain Dr. P. P. Narayanan second defendant, G. Perumal third defendant, and the executive council from taking or holding or remaining in office as executive council members on the ground that there was illegality in their election held on May 18, 19 and 20, 1972 as set out in the affidavit in support of the Notice of Motion.

On October 8 the respondents/defendants gave notice of preliminary objection stating that the court has no jurisdiction to hear the Notice of Motion as the applicants, as members of the union, have not exhausted all domestic remedies as provided for in the union's constitution.

On the day of the hearing of the Notice of Motion Mr. D. P. Xavier counsel for the respondents addressed the court on the preliminary objection. He submitted that where there was a dispute between a member and union domestic remedies must first of all be exhausted before referring the matter to court.

In *Tharmalingam* v. *Sambanthan*[1] Thomson C.J. (as he then was) hearing an appeal from the appellant, a member of the union, who sought court's declaration that his suspension from membership was null and void held that —